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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/764,096

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Luis Felipe Cabrera

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EXAMINER

LOHN, JOSHUA A

ART UNIT

PAPER NUMBER

2114

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/764,096	Applicant(s) CABRERA ET AL.	
	Examiner Joshua A. Lohn	Art Unit 2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8 and 14-32 is/are rejected.
- 7) ☒ Claim(s) 6 and 9-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/23/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 14-26, and 32 are rejected under 35 U.S.C. 101 because they claim a non-statutory embodiment for the computer-readable media that is not of a tangible nature, see specification, paragraph 26, where it is defined that “term computer-readable media as used herein includes both storage media and communications media”.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 9, 14, 15, 22, 30, are 31 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 5, 10,

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14, and 17 of copending Application No. 10/763,553. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following:

Claims 1 and 2 of the copending application contain every element of claims 1 and 2 of the instant application and as such anticipate claims 1 and 2 of the instant application.

Claims 1, 4, and 5 of the copending application contain every element of claim 9 of the instant application and as such anticipate claim 9 of the instant application.

Claims 10 and 14 of the copending application contain every element of claims 14 and 15 of the instant application and as such anticipate claims 14 and 15 of the instant application.

Claims 10, 16, and 17 of the copending application contain every element of claim 22 of the instant application and as such anticipate claim 22 of the instant application.

Claim 1 of the copending application contains every element of claim 30 of the instant application and as such anticipates claim 30 of the instant application.

Claims 1 and 2 of the copending application contain every element of claim 31 of the instant application and as such anticipate claim 31 of the instant application.

“A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). “ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, 8, 14-18, 20, 21, and 27-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Reynolds et al., United States Patent number 5,627,964, published May 6, 1997.

As per claim 1, Reynolds discloses in a computing system that includes one or more processors, persistent memory configured to store information that persists through power loss of the computing system, and system memory that may more directly accessed by the one or more processors, a method for recovering from a system failure, the method comprising the following: an act of receiving a message corresponding to a particular message transaction following a message exchange pattern (Reynolds, col. 6, lines 20-25, where the determination of the special flag is the message received); an act of loading state information for the message transaction from persistent memory to system memory in response to having received the message (Reynolds, col. 6, lines 59-64, where the loading of the flag information is inherently persistent because the flag information remains during a computer system reset); an act of determining from the state information whether or not the processing instance associated with the particular

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message transaction is in recovery mode (Reynolds, col. 6, lines 25-34, where the determination is shown in the status of the fail-safe boot); and an act of branching process flow depending on whether or not the processing instance is in recovery mode (Reynolds, col. 6, lines 33-67, where the boot continues based upon the determination of recovery, or fail-safe mode).

As per claim 2, Reynolds further discloses a method in accordance with claim 1, wherein the act of determining from the state information whether or not the processing instance associated with the particular message transaction is in recovery mode comprises the following: an act of determining that the processing instance is in recovery mode (Reynolds, col. 6; lines 33-54).

As per claim 3, Reynolds further discloses a method in accordance with claim 2, wherein the act of branching process flow depending on whether or not the processing instance is in recovery mode comprises the following: an act of executing recovery code (Reynolds, col. 7, lines 1-17).

As per claim 4, Reynolds further discloses a method in accordance with claim 3, further comprising the following: after executing the recovery code, an act of determining that recovery has completed successfully (Reynolds, col. 7, line 67 through col. 8, line 3).

As per claim 5, Reynolds further discloses a method in accordance with claim 4, further comprising the following: an act of causing the state information to reflect that the processing instance is no longer in recovery mode (Reynolds, col. 6, lines 50-67, where the flag not being reset during a boot attempt discloses causing the state information to reflect no longer in recovery mode).

As per claim 7, Reynolds further discloses a method in accordance with claim 1, wherein the act of determining from the state information whether or not the processing instance associated with the particular transaction is in recovery mode comprises the following: an act of determining that the processing instance is in normal mode (Reynolds, col. 6, lines 55-57).

As per claim 8, Reynolds further discloses a method in accordance with claim 7, wherein the act of branching process flow depending on whether or not the processing instance is in recovery mode comprises the following: an act of executing normal code without executing recovering code (Reynolds, col. 6, lines 55-57).

As per claims 14-18, 20, and 21, these claims are merely a program product for implementing the methods of claims 1-5, 7, and 8 respectively. Reynolds discloses implementing the system in a software based operating system, which is equivalent to a program product (Reynolds, col. 2, lines 14-67). In addition to teaching the program product, Reynolds teaches all the remaining limitations of these claims in the rejections provide for claims 1-5, 7, and 8 above, and those same rejections apply for claims 14-18, 20, and 21 as well.

As per claim 27, Reynolds further discloses one or more computer-readable media in accordance with claim 14, wherein the one or more computer-readable media are physical memory media (Reynolds, col. 4, lines 1-38).

As per claim 28, Reynolds further discloses one or more computer-readable media in accordance with claim 27, wherein the physical memory media is system memory (Reynolds, col. 4, lines 1-38).

As per claim 29, Reynolds further discloses one or more computer-readable media in accordance with claim 27, wherein the physical memory media is persistent media (Reynolds, col. 4, lines 1-38).

As per claim 30, Reynolds discloses in a computing system that includes one or more processors, persistent memory configured to store information that persists through power loss of the computing system, and system memory that may more directly accessed by the one or more processors, a method for recovering from a system failure, the method comprising the following: an act of detecting receipt of a message corresponding to a particular message transaction pattern that follows a message exchange pattern (Reynolds, col. 6, lines 20-25, where the determination of the special flag state would have been initiated by some form of message); and a step for identifying an operational mode of a processing instance corresponding to the particular message transaction (Reynolds, col. 6, lines 28-67, where the determination of fail-safe mode is the identification of an operational mode).

As per claim 31, Reynolds further discloses a method in accordance with claim 30, wherein the step for identifying an operational mode of a processing instance corresponding to the particular message transaction comprises the following: an act of loading state information for the message transaction from persistent memory to system memory in response to having received the message (Reynolds, col. 6, lines 59-64, where the loading of the flag is the loading of state information, and the flag is inherently stored persistently because it maintains its value even following system reset); an act of determining from the state information whether or not the processing instance associated with the particular message transaction is in recovery mode

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(Reynolds, col. 6, lines 6, lines 25-34, where the boot mode indicates if in recovery mode, or fail-safe mode); and an act of branching process flow depending on whether or not the processing instance is in recovery mode (Reynolds, col. 6, lines 33-67, where the boot selection results in the appropriate branching of process flow).

Allowable Subject Matter

Claims 6 and 9-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is provided on form PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua A. Lohn whose telephone number is (571) 272-3661. The examiner can normally be reached on M-F 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAL



SCOTT BADERMAN
SUPERVISORY PATENT EXAMINER